

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

ADJUSTACAM LLC,

Plaintiff,

vs.

AMAZON.COM, INC., et al.

Defendants.

Case No. 6:10-CV-00329-LED

DECLARATION OF VICTOR DE GYAREFAS IN SUPPORT OF DEFENDANT WAL-
MART STORES, INC.'S PARTIAL MOTION TO DISMISS FOR FAILURE TO STATE
A CLAIM, FED. R. CIV. P. 12(B)(6)

I, Victor de Gyarfas, declare:

1. I make this declaration on the basis of personal knowledge, and if called to testify as a witness, I would and could testify competently hereto.

2. I am a partner at the law firm Foley & Lardner LLP, and counsel of record for Wal-Mart Stores, Inc. in the above-reference action. I make this declaration in support of Defendant Wal-Mart Stores, Inc.'s Partial Motion to Dismiss for Failure to State a Claim, Fed. R. Civ. P. 12(b)(6).

3. Attached hereto as Exhibit 1 is a true and correct copy of the First Amended Complaint for Patent Infringement filed August 16, 2010 in this case, Case No. 6:10-cv-00329-LED.

4. Attached hereto as Exhibit 2 is a true and correct copy of Westlaw case *Ruffin v. Kansas City Southern Railway Co.*, No. 2:07-cv-87, 2007 WL 4290006 (E.D. Tex. Dec. 5, 2007) (Davis, J.).

5. Attached hereto as Exhibit 3 is a true and correct copy of the Memorandum Opinion and Order filed March 29, 2010 in *Joao Bock Transaction Systems of Texas, LLC v. AT&T, Inc.*, Case No. 6:09-cv-208, which document was obtained from PACER.

6. Attached hereto as Exhibit 4 is a true and correct copy of the Memorandum Opinion and Order filed March 29, 2010 in *Joao Control & Monitoring Systems of Texas, LLC v. Playboy Enterprises Inc.*, Case No. 9:09-cv-499, which document was obtained from PACER.

7. Attached hereto as Exhibit 5 is a true and correct copy of the Order Granting Motion to Dismiss Counterclaims filed September 14, 2009 in *Elan Microelectronics Corporation v. Apple, Inc.*, Case No. C 09-01531 RS, which document was obtained from PACER.

8. Attached hereto as Exhibit 6 is a true and correct copy of Westlaw Case *Eolas Technologies, Inc. v. Adobe Systems, Inc.*, No. 6:09-cv-446, 2010 WL 2026627 (E.D. Tex. May 6, 2010) (Davis, J.).

9. Attached hereto as Exhibit 7 is a true and correct copy of Westlaw Case *Performance Aftermarket Parts Group, Ltd. V. TI Group Automotive Sys., LLC*, 2007 WL 2818269 (S.D. Tex. Sept. 25, 2007).

10. Attached hereto as Exhibit 8 is a true and correct copy of Westlaw case *Hewlett-Packard Co. v. Intergraph Corp.*, No. C 03-2517 MJJ, 2003 WL 23884794 (N.D. Cal. Sept. 6, 2003).

I declare under penalty of perjury that the foregoing is true and correct.

Dated: September 3, 2010

/s/ Victor de Gyrfas

Victor de Gyrfas

CERTIFICATE OF SERVICE

The undersigned certified that the DECLARATION OF VICTOR DE GYARFAS IN SUPPORT OF DEFENDANT WAL-MART STORES, INC.'S PARTIAL MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM, FED. R. CIV. P. 12(B)(6) was filed electronically in compliance with Local Rule CV-5(a). As such, this document was served on all counsel who have consented to electronic service.

/s/ Victor de Gyarfas